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07 UNITED STATES DISTRICT COURT
08 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

09 UNITED STATES OF AMERICA,)
10 Plaintiff,)
11 v.) Case No. MJ08-441
12 ANDREW KYLE WHITECAR,) DETENTION ORDER
13 Defendant.)
14 _____)

15 Offenses charged:

16 Count 1: Conspiracy to Transport Firearms, in violation of 18, U.S.C. §§ 371,
922(a)(5), and 922(e).

17 Date of Detention Hearing: October 8, 2008

18 The Court, having conducted a detention hearing pursuant to 18 U.S.C. § 3142(f), and
19 based upon the factual findings and statement of reasons for detention hereafter set forth,
20 finds the following:

21 FINDINGS OF FACT AND STATEMENT OF REASONS FOR DETENTION

22 (1) The defendant does not appear to pose a risk of flight, because he has been a
23 resident of the community for more than 8 years, has a job, a wife and family.
24 Moreover, he does not have any failures to appear for court proceedings on his
25 record, and did not seek to flee when he found out that he was a suspect in
26 criminal identity theft charges in November 2006.

- 01 (2) The defendant is being detained as a potential danger to the community that
02 cannot be otherwise be avoided without pretrial detention. The burden on the
03 government is to establish the need for detention on this prong by clear and
04 convincing evidence. The government has done so.
- 05 (3) When examining the factors for detention identified in 18 U.S.C. §3142(g) the
06 court is to examine first, the nature and seriousness of the offense charged,
07 including whether the offense involves firearms. This offense involves the
08 distribution of a substantial number of firearms, including firearms that have
09 been illegally modified. In addition, when the defendant was arrested,
10 marijuana, magazines and bullets were also found in his car.
- 11 (4) As to the second factor identified in 18 U.S.C. § 3142(g), the weight of the
12 evidence is very strong. This, however, is the least important of the factors to
13 be considered.
- 14 (5) As to the third factor identified in 18 U.S.C. §3142(g), the personal
15 characteristics of the defendant, the evidence is mixed. The defendant is
16 married and has a family. He also has a job and ties to the community.
17 Accordingly, the Court concludes as noted above, he does not pose a risk of
18 flight. The Court is concerned because the defendant has been consuming
19 controlled substances (marijuana) on a daily basis.
- 20 (6) As to the fourth factor identified in 18 U.S.C. § 3142 (g), the nature and
21 seriousness of the danger to the community, the Court is persuaded that this
22 factor tips in favor of detention. Prior to his arrest, the defendant was being
23 investigated for identity theft. According to the Assistant United States
24 Attorney, the defendant “confessed.” This “confession” took place in
25 November 2006, nearly 2 years prior to the detention hearing in this case. The
26 government claims that the Secret Service agents have been too busy with the

01 presidential campaign to pursue the charge, but the campaign does not
02 plausibly justify a nearly two-year delay in bringing identity theft charges,
03 particularly in light of a “confession.” Accordingly, the undersigned does not
04 consider the “confession” to be evidence of other criminal conduct for
05 purposes of this detention hearing. It is relevant, however, because the
06 defendant was aware that he was the subject of some sort of investigation, and
07 yet was not deterred by that investigation from committing the acts that are the
08 subject of the charges. In addition, the defendant has been a suspect in an
09 attempted armed robbery. The offense involved a firearm. Ultimately,
10 however, no formal charges were filed. In addition, the Assistant United
11 States Attorney proffered that the defendant was quite aware of the Assistant
12 United States Attorney who was assigned to the case, and indicated he had
13 done some research on him. Although the Court does not interpret this as
14 evidence of a direct threat against the Assistant United States Attorney, in
15 light of the substantial number of firearms at issue, the nature of the firearms,
16 and the brazenness of the conduct alleged in this case in light of an on-going
17 identity theft investigation, this weighs in favor of detention when considering
18 danger to the community.

- 19 (7) Accordingly, the Court finds that there are no conditions other than detention
20 that will reasonably ensure the safety of the community.


21 IT IS THEREFORE ORDERED:

- 22 (1) Defendant shall be detained pending trial and committed to the custody of the
23 Attorney General for confinement in a correctional facility separate, to the
24 extent practicable, from persons awaiting or serving sentences or being held in
25 custody pending appeal;
- 26 (2) Defendant shall be afforded reasonable opportunity for private consultation

01 with counsel;

- 02 (3) On order of a court of the United States or on request of an attorney for the
03 government, the person in charge of the corrections facility in which defendant
04 is confined shall deliver the defendant to a United States Marshal for the
05 purpose of an appearance in connection with a court proceeding; and
06 (4) The Clerk shall direct copies of this Order to counsel for the United States, to
07 counsel for the defendant, to the United States Marshal, and to the United
08 States Pretrial Services Officer.

09 DATED this 8th day of October, 2008.

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11 JAMES P. DONOHUE
12 United States Magistrate Judge
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